

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DLJ MORTGAGE CAPITAL, INC. and
CREDIT SUISSE FIRST BOSTON
MORTGAGE CAPITAL, LLC,

Plaintiffs,

v.

ACT LENDING CORPORATION d/b/a
AMERICAN CAPITAL MORTGAGE
SERVICES, AMERICAN CAPITAL
TRUST, and NELSON HAWS,

Defendants.

Case No. 07-CV-10318 (JGK)

**DECLARATION OF ROBERT A. PINEL, ESQ. IN SUPPORT OF AWARDING COSTS
AND ATTORNEYS' FEES**

Robert A. Pinel, Esquire, pursuant to 28 U.S. C. § 1746, declares under penalty of perjury as follows:

1. I am Counsel with the law firm of Flamm, Boroff & Bacine, P.C. ("**FBB**"), attorneys for plaintiffs DLJ Mortgage Capital, Inc. ("**DLJMC**") and Credit Suisse First Boston Mortgage Capital, Inc. ("**CSFBMC**"). I make this declaration pursuant to Magistrate Theodore H. Katz's April 16, 2008 Order in support of DLJMC's and CSFBMC's application for an award of attorneys' fees and costs against defendants Act Lending Corporation ("**Act Lending**") and American Capital Trust ("**ACT Capital**").
2. The purpose of this declaration is to advise the Court of the attorney's fees and costs plaintiffs have incurred in connection with the above-captioned matter and to place before the Court billing records and invoices supporting Plaintiffs' claims for attorney's fees and costs.

3. Pursuant to Section 8.01 of the ACT and Act Lending Purchase Agreements, defendants agreed to indemnify DLJMC for any and all claims, losses, damages, penalties, fines, forfeitures, legal fees and related costs, judgments and any other costs, fees and expenses that plaintiffs may sustain in any way related to defendants failure to observe and perform its duties, obligations, and covenants in strict compliance with the terms of the Purchase Agreements.

4. Similarly, pursuant to Section 16(f)(i) of the Master Repurchase Agreement between CSFBMC and ACT Lending, Defendant ACT Lending agreed to pay and indemnify CSFBMC for any and all claims, losses, damages, penalties, fines, forfeitures, legal fees and related costs, judgments and any other costs, fees and expenses that plaintiffs may sustain in any way related to defendants failure to observe and perform its duties, obligations, and covenants in strict compliance with the terms of the Master Repurchase Agreement.

5. As a result of Defendants' failure to observe and perform their respective duties, obligations and covenants pursuant to the terms of the Purchase Agreements and the Master Repurchase Agreement, DLJMC and CSFBMC have incurred legal fees and expenses in connection with, inter alia (a) preparing default notices; (b) drafting the Complaint in this action; (c) drafting the application for a default judgment against defendants; and (d) drafting the Proposed Findings of Fact and Conclusions of Law and supporting affidavits in respect of the present inquest.

6. The timekeeper who has been involved throughout this litigation includes one attorney, Robert A. Pinel, Esq., and one paralegal, Susan J. Dickinson.

7. Mr. Pinel, Counsel with FBB's Litigation Department, graduated from Columbia University in 1984 and received his law degree from the University of Georgia in 1989. Mr. Pinel's hourly rate for this litigation is \$250.

8. Ms. Dickinson has been a paralegal since 1993 and has worked at several litigation firms in the Allentown, Pennsylvania area. Her hourly rate for this litigation is \$95.

9. DLJMC and CFSCBMC have incurred attorney and professional fees of \$17,450 in pursuing this litigation. The legal expenses and costs incurred by plaintiffs and the services provided by FBB on behalf of plaintiffs were reasonable and necessary. Copies of the billing statements detailing charges plaintiffs have incurred in connection with this matter, which have been redacted to protect attorney-client privileged information, are annexed hereto as Exhibit A.¹

9. In addition, plaintiffs have incurred \$2,744.81 in costs, including the filing fee for the filing of the Complaint and service charges for service of the Complaint, Amended Complaint, and Orders to Show Cause on defendants. The specific charges are set forth in the billing statements that are attached as Exhibit A.

10. In sum, for the period September 11, 2007 to the present, plaintiff seeks legal fees in the total amount of \$17,450.00 and costs in the total amount of \$2,744.81.

Dated: Allentown, Pennsylvania
May 15, 2008


Robert A. Pinel

¹ An un-redacted copy of Exhibit A will be provided to Chambers.

**FLAMM,
BOROFF
& BACINE, PC**

ATTORNEYS AT LAW

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DLJ Mortgage Capital, Inc.
11 Madison Avenue
4th Floor
New York NY 10010

Page: 1

October 01, 2007

Account No: 8377-17003M

Invoice No: 107669

Attn: Bruce Kaiserman, VP

v. ACT Lending

*Payment is requested upon receipt of this invoice.
Please make checks payable to: FLAMM, BOROFF & BACINE,
P.C.
Tax ID# 23-2864510*

*We now accept Visa, Mastercard, Discover and American
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accounting department to discuss payment options at (267)
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Fees

	<u>Rate</u>	<u>Hours</u>	
09/11/2007 RAP			
	250.00	3.90	975.00
09/20/2007 RAP			
	250.00	2.70	675.00
For Current Services Rendered		6.60	1,650.00

Recapitulation

<u>Timekeeper</u>	<u>Hours</u>	<u>Rate</u>	<u>Total</u>
Robert A. Pine1	6.60	\$250.00	\$1,650.00

Total Current Work 1,650.00

Balance Due \$1,650.00

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November 01, 2007

Account No: 8377-17003M

Invoice No: 109906

Attn: Bruce Kaiserman, VP

v. ACT Lending

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Fees

	<u>Rate</u>	<u>Hours</u>	
10/05/2007 RAP		1.40	n/c
RAP			
	250.00	3.10	775.00
10/09/2007 RAP			
	250.00	5.10	1,275.00
For Current Services Rendered		8.20	2,050.00
Total Non-billable Hours		1.40	

Recapitulation

<u>Timekeeper</u>	<u>Hours</u>	<u>Rate</u>	<u>Total</u>
Robert A. Pintel	8.20	\$250.00	\$2,050.00

Total Current Work	2,050.00
Previous Balance	\$1,650.00
Balance Due	<u>\$3,700.00</u>

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11 Madison Avenue
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Page: 1

January 01, 2008

Account No: 8377-17003M

Invoice No: 113747

Attn: Bruce Kaiserman, VP

v. ACT Lending

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Fees

	<u>Rate</u>	<u>Hours</u>	
11/05/2007 RAP	250.00	1.10	275.00
11/13/2007 RAP	250.00	1.60	400.00
11/26/2007 RAP	250.00	0.80	200.00
12/21/2007 RAP	250.00	3.50	875.00
12/27/2007 RAP	250.00	2.30	575.00
		9.30	2,325.00
For Current Services Rendered			

Recapitulation

<u>Timekeeper</u>	<u>Hours</u>	<u>Rate</u>	<u>Total</u>
Robert A. Pine1	9.30	\$250.00	\$2,325.00

DLJ Mortgage Capital, Inc.

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January 01, 2008

Account No: 8377-17003M

Invoice No: 113747

v. ACT Lending

Advances

11/12/2007	Filing fee Clerk of Court - SDNY - file complaint	350.00
11/13/2007	Federal Express/UPS/Worldwide Express - US District Court	24.50
11/20/2007	Sheriff's fee/service Gietzen & Associates - service of 3 summons and Complaints.	195.00
	Total Advances	<u>569.50</u>
	Total Current Work	2,894.50
	Previous Balance	\$3,700.00
	Finance Charge	0.14
	Balance Due	<u>\$6,594.64</u>

Aged Due Amounts					
<u>0-30</u>	<u>31-60</u>	<u>61-90</u>	<u>91-120</u>	<u>121-180</u>	<u>181+</u>
2,894.64	0.00	2,050.00	1,650.00	0.00	0.00

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11 Madison Avenue
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Page: 1

February 01, 2008

Account No: 8377-17003M

Invoice No: 118773

Attn: Bruce Kaiserman, VP

v. ACT Lending

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Fees

	<u>Rate</u>	<u>Hours</u>	
01/09/2008 RAP			
	250.00	0.50	125.00
01/14/2008 RAP			
	250.00	0.50	125.00
01/18/2008 RAP			
	250.00	0.50	125.00
01/23/2008 RAP	250.00	1.50	375.00
RAP		2.60	n/c
01/25/2008 RAP			
	250.00	2.50	625.00
For Current Services Rendered		5.50	1,375.00
Total Non-billable Hours		2.60	

Recapitulation

<u>Timekeeper</u>	<u>Hours</u>	<u>Rate</u>	<u>Total</u>
Robert A. Pine1	5.50	\$250.00	\$1,375.00

DLJ Mortgage Capital, Inc.

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February 01, 2008

Account No: 8377-17003M

Invoice No: 118773

v. ACT Lending

Advances

12/27/2007	Online legal research. Pacer Service Center	1.04
12/28/2007	Federal Express/UPS/Worldwide Express - US Courthouse	21.51
01/09/2008	Sheriff's fee/service Gietzen and Associates - serving Order to show cause on 3 parties in Florida	390.00
01/09/2008	Federal Express/UPS/Worldwide Express - Gietzan & Associates	41.10
	Total Advances	453.65
	Total Current Work	1,828.65
	Previous Balance	\$6,594.64
	Finance Charge	2.27
	Balance Due	<u>\$8,425.56</u>

Aged Due Amounts					
<u>0-30</u>	<u>31-60</u>	<u>61-90</u>	<u>91-120</u>	<u>121-180</u>	<u>181+</u>
1,830.92	2,894.64	0.00	2,050.00	1,650.00	0.00

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11 Madison Avenue
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Page: 1

March 01, 2008

Account No: 8377-17003M

Invoice No: 120297

Attn: Bruce Kaiserman, VP

v. ACT Lending

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Fees

	<u>Rate</u>	<u>Hours</u>	
02/05/2008 RAP	250.00	0.40	100.00
02/13/2008 RAP	250.00	1.40	350.00
02/14/2008 RAP	250.00	0.80	200.00
02/19/2008 RAP	250.00	0.60	150.00
02/25/2008 RAP	250.00	1.60	400.00
02/28/2008 RAP	250.00	2.60	650.00
For Current Services Rendered		7.40	1,850.00

DLJ Mortgage Capital, Inc.

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March 01, 2008

Account No: 8377-17003M

Invoice No: 120297

v. ACT Lending

Recapitulation

<u>Timekeeper</u>	<u>Hours</u>	<u>Rate</u>	<u>Total</u>
Robert A. Pinel	7.40	\$250.00	\$1,850.00

Expenses

01/22/2008	Travel expense Pinel, Robert A. - Hotel Expenses - HOJO Express, New York, NJ	399.52
01/22/2008	Travel expense Pinel, Robert A. - includes mileage, tolls and parking to and from New York	226.25
	Total Expenses	625.77

Advances

01/28/2008	Federal Express/UPS/Worldwide Express - Froy - Gretzen & Assoc	66.36
02/20/2008	Federal Express/UPS/Worldwide Express - US Courthouse	22.67
	Total Advances	89.03
	Total Current Work	2,564.80
	Previous Balance	\$8,425.56

Payments

02/07/2008	Fee Payment	-2,325.00
02/07/2008	Reimbursement for Advanced Costs	-569.50
	Total Payments	-2,894.50
	Finance Charge	4.41
	Balance Due	<u>\$8,100.27</u>

Aged Due Amounts					
<u>0-30</u>	<u>31-60</u>	<u>61-90</u>	<u>91-120</u>	<u>121-180</u>	<u>181+</u>
4,400.13	0.14	0.00	0.00	3,700.00	0.00

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